

FAIR EMPLOYMENT & HOUSING COMMISSION

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MINUTES 464th COMMISSION MEETING

October 2, 2006
Held Telephonically in
Los Angeles, San Diego, Sacramento,
and San Francisco, California

PRESENT:

Los Angeles: Chairman George Woolverton and member of the public: Lonnie Giamela

San Diego: Commissioner Patrick Adams.

Sacramento: Commissioner Linda Ng and members of the public: Georgia Lee and Kate Sproul.

San Francisco: Commissioner Tamiza Hockenhull, Commission staff Ann Noel,
Caroline Hunt and Loc D. Tra; and members of the public: Lynn Lieber,
Travis Wilkins and Helena Eldemir.

OPEN SESSION

Chairman Woolverton moved, Commissioner Ng seconded, and the Commission unanimously voted to call the meeting to order at 9:05 a.m. [06-42]

REVIEW OF THE MINUTES

Chairman Woolverton moved, Commissioner Adams seconded, and the Commission unanimously voted to approve the Minutes and Transactions of the 463rd meeting as submitted after the Commission corrected a minor typographical error, i.e. the third word "an" in the fourth line of page 4 under the *Commission Work Plan* section should read "and." [06-43]

Kate Sproul joined the meeting at 9:10 a.m.

HARASSMENT TRAINING REGULATIONS

The Commission and members of the public began discussions of revisions of the *August 29, 2006, Revised Harassment Training and Education Regulations (without underlining and strikeout from the June 20, 2006, proposed regulations)*.

Staff suggested further changes in the following four areas:

1. Definition of a “contractor.” (§7288.0(a)(1), p. 1.)

§7288.0(a)(1)

(1) “Contractor” is a person performing services pursuant to a contract to an employer, meeting the criteria specified by Government Code section 12940, subdivision (j)(5) for each working day in 20 consecutive weeks in the current calendar year or preceding calendar year.

Chairman Woolverton moved, Commissioner Hockenhull seconded, and the Commission unanimously voted to accept the recommended change. [06-44]

4.) 2. Clarifications of the “training year” tracking method. (§7288.0(b)(1)(B), pp. 3-

§7288.0(b)(1)(B)

B. “Training year” tracking: An employer may designate a “training year” in which it trains some or all of its supervisory employees and thereafter must again retrain ~~all of its~~ these supervisors by the end of the next “training year,” two years later; ~~even those newly hired or promoted supervisors that received training in the prior year. Under the training year method, no supervisor shall be retrained any later than 6 months from the anniversary date of his or her last training. Thus, supervisors trained in training year 2005 shall be retrained in 2007. For newly hired or promoted supervisors who receive training within six months of assuming their supervisory positions and that training falls in a different training year, the employer may include them in the next group training year, even if that occurs sooner than two years. An employer shall not extend the training year for the new supervisors beyond the initial two year training year. Thus, with this method, assume that an employer trained all of its supervisors in 2005 and sets 2007 as the next training year. If a new supervisor is trained in 2006 and the employer wants to include the new supervisor in its training year, the new supervisor would need to be trained in 2007 with the employer’s other supervisors. and that a supervisor received his initial training on May 31, 2005. That~~

~~supervisor must be re-trained by November 30, 2007. In addition, the employer hired a new supervisor in February 2006 and provided the training on July 10, 2006. That new supervisor must still be trained during the 2007 training year.~~

Chairman Woolverton moved, Commissioner Hockenhull seconded, and the Commission unanimously voted to accept the recommended change. [06-45]

3. Provisions regarding duplicate sexual harassment training for supervisors who have previously been trained. (§7288.0(b)(4), p. 4.)

§ 7288.0(b)(4)-(b)(6)

(4) Training for New Supervisors. New supervisors shall be trained within six months of assuming their supervisory position and thereafter shall be trained once every two years, measured either from the individual or training year tracking method. ~~A new supervisor who has received harassment training in compliance with this section within the prior two years either from a prior or alternate employer need only be given a copy, be required to read and to acknowledge receipt of the new employer's anti-harassment policy within six months of assuming the supervisor's new supervisory position. That supervisor shall otherwise be put on a two year tracking schedule based on the supervisor's last harassment training.~~

(5) Duplicate Training. A supervisor who has received anti-harassment training in compliance with this section within the prior two years either from a current, a prior, an alternate or a joint employer need only be given, be required to read and to acknowledge receipt of, the employer's anti-harassment policy within six months of assuming the supervisor's new supervisory position or within six months of the employer's eligibility. That supervisor shall otherwise be put on a two year tracking schedule based on the supervisor's last harassment training. The burden of establishing that the prior training was legally compliant with this section shall be on the current employer.

~~(5)~~ (6) Duration of Training. The training required by this section does not need to be completed in two consecutive hours. For classroom training or webinars, the minimum duration of a training segment shall be no less than half an hour. E-learning courses may include bookmarking features which allow a supervisor to pause their individual training so long as the actual e-learning program is two hours.

Chairman Woolverton moved, Commissioner Hockenhull seconded, and the Commission unanimously voted to accept the recommended change. [06-46]

4. The definition of a "Subject Matter Expert." (§7288.0(c), p. 5.)

§ 7288.0(c):

(c) "Trainers or educators" under this section shall be "Subject Matter Experts" who have legal education coupled with practical experience, or substantial practical experience in training in harassment, discrimination and retaliation prevention.

Chairman Woolverton moved, Commissioner Hockenhull seconded, and the Commission unanimously voted to accept the recommended change. [06-47]

Chairman Woolverton moved, Commissioner Adams seconded, and the Commission unanimously voted to adopt all four areas of changes as suggested by staff and to submit these modified regulations for public comment. [06-48]

A copy of these October 2, 2006 modified regulations with all revisions is attached.

EXECUTIVE AND LEGAL AFFAIRS SECRETARY'S (ELAS) REPORT

ELAS Noel discussed the following from the ELAS Report:

The next November 14, 2006 Commission meeting will be held in Sacramento at the State Capitol. The Governor and State Consumer Services Agency or their representatives have been invited to discuss the 50th Anniversary Celebration of the enactment of the Fair Employment and Housing Act (FEHA).

ELAS Noel anticipated that the Commission will be looking at legislation for next year. Thus, she is working with Commissioner Ng to invite a legislative staff person to give the Commission an overview of the legislative process.

The Commission has offered the two vacant Administrative Law Judge positions to two candidates. Regina Brown has accepted the position and the other candidate, Joseph Ragazzo, has not yet accepted.

ADJOURNMENT

Chairman Woolverton moved, Commissioner Adams seconded, and the Commission unanimously voted to adjourn. [06-49]

The Commission adjourned its meeting and forum at 9:28 a.m.

Date: October 2, 2006

GEORGE WOOLVERTON
Chairman

ANN M. NOEL
Executive and Legal Affairs Secretary

**REPORT OF TRANSACTIONS
OF THE 464th COMMISSION MEETING**

October 2, 2006

**Held Telephonically in
Los Angeles, San Diego, Sacramento,
and San Francisco, California**

THE COMMISSION AT THIS MEETING TOOK THE FOLLOWING ACTIONS:

- 06-42 Approved calling the meeting to order.

- 06-43 Approved the Minutes and Transactions of the 463rd meeting as submitted after the Commission corrected a minor typographical error as described in the body of the minutes.

- 06-44 Voted 4:0 to modify (§7288.0(a)(1), p. 1.) as described in the body of the minutes.

- 06-45 Voted 4:0 to modify (§7288.0(b)(1)(B), pp. 3-4.) as described in the body of the minutes.

- 06-46 Voted 4:0 to modify (§7288.0(b)(4), p. 4.) as described in the body of the minutes.

- 06-47 Voted 4:0 to modify (§7288.0(c), p. 5.) as described in the body of the minutes.

- 06-48 Voted 4:0 to adopt all four changes as submitted by staff and modified at the October 2, 2006, meeting.

- 06-49 Unanimously voted to adjourn the meeting.

Prepared By

Loc D. Tra
Clerk of the Commission